

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

14-cr-462 (CS)

-against-

Declaration

DENNIS SICA,

Defendant.

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I, Theodore S. Green, an attorney admitted to practice in this Court and in the Courts of New York, declare and affirm pursuant to 28 U.S.C. §1746, as follows:

1. This declaration is submitted pursuant to the Court's order of June 4, 2019, directing a further declaration regarding allegations at pages 19-20 of Dennis Sica's reply submission regarding events of the morning of the scheduled trial.
2. The government applied for immunity orders for five witnesses. My understanding was that most of these witnesses were at liberty.
3. On the morning of the scheduled trial, the government attorneys did not advise defense counsel that they would be filing a prior felony information pursuant to 21 U.S.C. §851. As stated in my previous declaration, the Section 851 issue had already been resolved by January 5, 2015, when the government assured me it would not be filing a prior-felony information under any circumstances.
4. On the morning of the scheduled trial, neither Mr. Willstatter nor myself told Mr. Sica that the government had reversed its position and was now threatening to file a prior felony information pursuant to 28 U.S.C. §851. However, at that time, as set forth in its *Pimentel* letter, the government

was taking the position that it would not agree to Sica receiving an additional one-point offense level reduction on a plea of guilty and that it would agree only to a two-point reduction for accepting responsibility. This additional point made the difference (going by the government's guidelines analysis) between guidelines of life and guidelines of 360 months to life. According to Mr. Willstatter, prior to Mr. Sica entering the plea, Mr. Willstatter asked the government attorneys whether they would be willing to agree to the additional one-point reduction and they declined to do so. Mr. Sica was advised of the government's position on the guidelines.

5. The transcript of the plea proceeding reflects that the government's guidelines position, as set forth in the *Pimentel* letter, was discussed with Mr. Sica prior to the plea. Neither Mr. Willstatter nor myself advised Mr. Sica that even if he beat the death results enhancement the conspiracy alone would leave him with guidelines at life "with the added §851 enhancement." I had previously advised Mr. Sica that, although the guidelines were advisory and not mandatory, should he be convicted after trial of the aggravated version of the offense with the death-results enhancement he was at risk of receiving a life sentence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 20, 2019



Theodore S. Green